

BANDWAGON

AUGUST-SEPTEMBER, 1953

25c

To the Members of CHS:

It was with the deepest regret that the convention at Norfolk was called off, and I still do not think that I am that important, that it could not have been held without me.

I am happy to say that Fred has completely recovered.

I am looking forward to seeing all the CHS members who are also C.F.A.'s at the National Convention here in Wichita. I will be at the registry desk, and I wish that all C. H. S. members would make themselves known to me as I want to hold a business meeting at 4 P.M. Saturday afternoon on the mezzanine in the Lassen Hotel. This year there will be another election of officers, and there are a number of matters that I want to talk over with as many of the members as I can. So please make yourself known to me. While I do know a number of my folks by sight, still with a membership of around three hundred I still don't know them all.

So looking forward to seeing as many as can attend the C. F. A. Convention and my best wishes to you all.

Your President,

(signed) BETTE LEONARD

P. S. Fred wishes to thank all the members and friends of C. H. S. for the many cards and letters he received during his recent illness.

CIRCUS HISTORICAL SOCIETY

Founded in 1939

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zine must be secured from both author
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The Editor Says

As we were saying good-bye to our friends (both show folks and other circus-lovers) on the Clyde Beatty Lot this past Sunday, it seemed sad to think that we might not see them again until next April. We, of the editorial Staff, are very fortunate that we do hear from members right a-long. I hope the rest of you will keep in touch with each other, too.

We try to publish some ex-cerpts from more or less personal letters in each issue, because we feel that you would like to share with others the pleasure you have had in your circus jaunts. Any of you are welcome to use this medium to keep your friends posted on what you are doing.

Let's don't put our friendships in Winter Quarters, let's keep the Show on the Road all year round.

NEW MEMBERS

Joseph John Sauer, Jr., No. 542
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Apt. 11,
Richmond 20, Virginia.

Baker W. Young, No. 543
70 Stewart St.,
Athens, Ohio.

Ray P. Markle, No. 544
517 Madison Ave.,
Steubenville, Ohio.

Abandonment Test Fixes Ownership Of Shelved Titles

By MELVIN D. HILDRETH, Past Pres., Circus Fans Assn.

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The problem of show titles is of tremendous interest to every showman. Who owns the title? Can it be imitated? Does it have a value? Does it possess good will? In the amusement business it is quite apparent that a title can have value which sometimes exceeds the value of the physical assets.

One great circus in making arrangements to lease railroad cars from the government found that its physical assets were not sufficient to warrant the loan required. The government held that the tents were mere cloth, the seats were only lumber, the animals had a limited life and the performers exhibited their art only under contract. However, the officials held that the show possessed an asset of far greater value than its physical properties. And that asset was its title. The title was of sufficient value, they decided, to warrant the loan required to obtain the cars.

Thus, similarity in names does become important because confusion could very well affect the value of the title. In other court actions, the play, "Two Orphans," was held to be affected by another play of a similar name, but "Charlie's Aunt" was held not to be affected by the title, "Charlie's Uncle." The name of Christy's Minstrels was held by a court to have value.

Similarity In Names

Suppose John Jones Circus & Brown Bros. Enormous Shows has been a household name in the territory it plays; then along comes James Smith Circus & Jones Bros. Great Shows. Is there such a confusion in the titles that the customers will go to one thinking that they are visiting the other?

Good will has been defined as "the probability that the old customers will resort to the old place." This definition has been expanded to embrace that fine opinion which customers have for a show identified by a particular name and the likelihood that they will continue their admiration for it. A judge defined good will as the advantage or benefit which is acquired by an establishment beyond its mere value and in consequence of public patronage and encouragement which it receives from habitual customers.

The amusement business is vastly different from ordinary commercial activities because the circus, for example, sells nothing tangible. The patron carries away nothing except a memory which is either pleasant or unpleasant. If it is pleasant, the circus has created by its performance an element of good will which is vital to its continued success. If an imitator presents a less entertaining performance, the similarity of titles would undoubtedly affect the good reputation of the circus which the patron believes he is attending.

General Rule Quoted

Relief often has been granted because of infringement of a trade name, including those, such as show titles, which are not used in connection with manufactured articles. The general rule has been stated as follows:

"When a person or business corporation has assumed the name of some other firm or corporation in the same line of business, or has adopted a name which closely resembles that of a business rival previously established, that the business of the latter is liable to be diverted and the public deceived on account of it. Thus, it has always been recognized as within the power or jurisdiction of a court of equity to restrain such person or new company from conducting business under the name assumed to the detriment of the older company"

The point boils down to whether or not the purchaser of a ticket is deceived. It is the function of the courts to prevent the public from being deceived in dealing with one concern in the belief that it is another.

Unused Titles Considered

There is another situation which is quite important. Suppose that the circus represented by a title has ceased to exist. The title is on the shelf. Another individual, probably of the same or similar name, produces a show having a title nearly equivalent to the original. Certainly the name of the shelved circus, because of its past reputation, does linger in the memory of former patrons. Therefore, the imitator profits by the reputation of a show no longer in actual existence.

The problem is one of abandonment by the original user.

Abandonment is the giving up of ownership whereby the thing given up ceases to be the property of any person. It can then be picked up by the first taker. Abandonment results only when there is an intention to part with the ownership, and it must be voluntary.

Prohibition Parallel

During prohibition a number of brands of whisky were forced off the market by reason of the law. Upon repeal, various individuals attempted to appropriate the old brand names on the theory of abandonment. Almost uniformly, the courts held that there was no intent to abandon, the original owners of the brands retained ownership.

In an amusement title, it is quite obvious that in many cases it is the intention of the owner to return to the field when conditions permit. He does not permanently abandon the title; there is no intention to do so. Therefore, another individual assuming the title, even tho the show is not on the road, undoubtedly would face litigation.

There must be an intent to part permanently with the right to the title, otherwise there is no abandonment. Only when the intention to abandon and relinquish possession of the title is clear does the abandonment become complete.

Time Not Only Factor

Time is not an essential element of abandonment. Mere lapse of time and non-use, accompanied by no other element of intent, generally has been held not to constitute abandonment. However, non-use and lapse of time are facts to be given weight as governing intention to abandon. For example, if the owner of a title fails to assert any claim to it, this probably would be indicative of intent. Each case, of course, must depend upon its own circumstances. In most cases, the question of intent to abandon is to be ascertained by the jury from a consideration of all the facts.

In 1909 Ringling Bros.' Circus sued Sells-Floto, endeavoring to halt the use of the Sells name, which Ringling claimed thru its ownership of the Forepaugh-Sells title. The U. S. Federal District Court in Denver held that the Sells Floto Circus could use the name because Willie Sells, adopted son of one of the original Sells brothers, had been associated with the Sells Floto show. However, the court held that Sells Floto no longer could use the picture of the original Sells brothers.

Forepaugh, Howes

The season of 1911 was the final time of Forepaugh-Sells Circus toured. The title was not used from then until 1935, when it was added to the Hagenbeck-Wallace title. Obviously, its use indicated an intention to continue a claim to the title.

Howe's Great London Circus title was used regularly for many years to about 1880. Thereafter, it was used at intervals by various managements. In 1908, Jerry Mugivan maintained that the title had been abandoned, and he assumed use of it.

The Howe's title was last used in 1923, when it was used on a two-car show, apparently by rental from Mugivan's American Circus Corporation. Howe's Famous Hippodrome Show was the title used in 1952 by Arthur Sturmak. Again, there is some indication of abandonment.

In 1937 the title of Ringling's Barnes-Sells Floto circus was expanded in some instances to Al G. Barnes, Sells Floto & John Robinson Combined Circuses. It is reported that this was done to protect Ringling's claim to the John Robinson title.

Copyright Act Applies

A title applying to a traveling amusement enterprise crossing State lines undoubtedly could receive protection under the Service Mark Provision of the Copyright Act of 1946. In reporting the sale of his circus property recently, B. C. Davenport described the Wallace Bros.' title as a copyrighted holding.

It may be inferred that a title is a precious possession to be protected by all proper means from those who might endeavor to profit from its good reputation.

Hagerstown Circusiana Exhibit

Attracts Over 3,000

The Seventh Annual Circusiana Exhibit sponsored by the Hagerstown, Maryland, members of the Circus Fans Association, Circus Modelbuilders and Owners Association, and Circus Historical Society at the Washington County Museum of Fine Arts in Hagerstown, once again proved to be a smash success with attendance totaling 3,070 for the twenty-five days July 1st through 29th (the museum is closed all day each Monday).

Hagerstown's two daily papers each ran five stories on the exhibit during its run and the last, which appeared on July 28th, quoted P. R. Hemphill, Jr., general chairman of the exhibit as follows, in part: "Although not so large as some of our past exhibits, the 1953 show is perhaps more diversified than any we have presented. We successfully blended the old with the new, the modern with the ancient in this year's exhibition." Hemphill has been chairman of the exhibit during each of the seven years it has been presented. Assisting him this year were Samuel Weston, chairman photographic committee; J. L. Harshman, chairman circus art committee; Chester Weddle, chairman circus movies and slides committee; Giles Shillingberg, chairman circus route cards and route books committee; and Carroll Baechtel, Jr., and Dan Rohrer, Sr., circus model committee.

The Photography Contest, the second year that this feature has been incorporated in the exhibit, had 133 entries this year. First, Second, Third, and two honorable mention awards were made in each class. Top winners included: Charles F. Miles, Hagerstown, Best of Show and Best of Show Black and White; 1st place Circus Action, 1st Place Circus General, 1st Place Grandstand General. Floyd McClintock, Uhrichsville, Ohio, Best of Show Color and 1st place Color Circus Action. Marcus Ritger, Jr., Warwick, Va., 1st Place Circus Portrait. Norman Senhauser, New Philadelphia, Ohio, 1st Place Color Circus General, and P. R. Hemphill, Jr., Hagerstown, Best of Show-Color Transparencies and 1st Place in each of the 5 transparencies classes.

The 1953 exhibit occupied the museum's south gallery, which incidentally is one of the larger main galleries, the ceramics room, and the print room. In the print room were 14 "on the spot" circus sketches by the late Walt Kuhn, recognized as one of America's foremost contemporaries. In the large gallery, were 8 paintings by Ray H. Wolf, a leading American circus painter, a painting of clown Emmett Kelly by William H. Day, Circus Fan of New Britain, Conn.,

as well as an illuminated photograph of Emmett Kelly by Arthur Harbaugh, Hagerstown, twenty-five lithographs representing many shows of the past twenty years displayed by Dan Rohrer, Jr., and J. L. Harshman of Hagerstown, and the photographic salon which in addition to the above mentioned prize winners included photos by Calvin E. Miller, Atlantic City, N. J.; H. Russell Wagner, Harrisburg, Pa.; Sam Weston, Williamsport, Md.; and Ed Grout, J. L. Harshman, and Chester Weddle, all of Hagerstown.

In the ceramics room there were 12 vertical glass wall cases of three to four levels in which were displayed a variety of items, route books, route cards, programs, contracts, checks, vouchers, tickets, photos, scrapbooks, heralds, couriers, horse plumes, animal training gun, elephant hook, model circus equipment in $\frac{1}{2}$ and $\frac{1}{4}$ inch scale, etc., from the collections of Bette Leonard, Wichita; James W. Kelly, North Haven, Conn.; the late Charles Doelker, Harrisburg; Carl Netter, Grand Concourse, New York City; Richard E. Conover, Xenia, Ohio; Russell Wagner, Harrisburg; Wm. Obenderfer, Frederick, Md.; and Hemphill, Harshman, Baechtel, Jr., Weddle, Dan Rohrer, Sr. and Dan Rohrer, Jr.; and H. E. McFaddin, all of Hagerstown. Due to the high calibre of the items displayed, this year all exhibitors were recipients of award ribbons.

For Want of a "Lot" a Circus Is Lost

Sent in by "Mack Reed", Wichita, Kansas

The people of Wichita as well as those in several other Kansas cities will not get to see the Big Show this season, although this was the year Ringlings had put Kansas on their list. It had been planned to play an engagement here, using the CJ stadium. But when it was learned no railway siding would be available for unloading the train the date was cancelled, and dates at Hutchinson, Dodge City and Independence were dropped for appearances in several Oklahoma cities.

Wichita and Kansas were for many years favorite territory for Ringling. In fact the largest single audience ever gathered under the big tent was at Hays, while the largest single day-and-night business was in Wichita. It was a world record for circus income in a single 24 hours. Ringlings had great popularity in Wichita, its officials and star performers made many friends here, and were entertained in various ways.

Wichita had another distinction for many years of having the ideal circus grounds, known in the profession as the "lot." Mathewson's pasture on East Central was so recognized by the tent show world. Lacking suitable and available show grounds Wichita will be passed up in the coming years, and will suffer a distinct loss in entertainment. Wichita loved a circus and the attachment was mutual.

—Wichita Eagle

From the Members

From John Heidl, Oshkosh, Wisc., Aug. 16

"Rain Falls on Circus Day, but show goes on. Performers, audience wade through mud, this was all witnessed by two members, John Heidl and Cliff Cowan on the lot of Ringling Bros., Barnum & Bailey circus here in Oshkosh, Aug. 1st. Both also visited on the Clyde Beatty circus lot in Appleton, Aug. 7th, and enjoyed performances on both shows."

From Charles Petty, Washington, New Jersey, August 9th

"This past season I met Don Shepherd, No. 54, Ho-Ho-Kus, N. J., on Ringling and Mills Lots, and he seems to be a fine fellow. Last night I caught Tom Pack's Circus in Paterson, N. J., but I didn't see Mr. Shepherd there anywhere.

Tom Pack's sure puts on a nice show, and Monday they play Easton, Pa., 13 miles from me, and I hope to catch it there at night. It is raining cats and dogs right now, so they will have a chance of it clearing off by tomorrow afternoon. I noticed small ad in Easton paper they will have a rain date the following day.

This year I have caught Ringling, Hunt, Mills and Hagen shows so far, also Beers-Barnes—this show sure keeps hid. They won't tell you where they came from, or go the next day. You almost have to follow them to the next town.

The personnel of Hagen Bros. seemed very good, no trouble, or fuss around that show, all speak very well of the show. They should grow.

The best act that I have liked so far this season were the "Lewis Sisters" on Mills Bros. This one girl is clear out of this world. She is really a nice worker. Mills was greatly enjoyed at three stands."

From Charley Kitto, Beloit, Wisc., August 19, 1953

"We saw the Ringling show at Rockford, July 30, a hot day but good attendance, and lot was hidden away, too, something Bill Conway told me never to do. Your friend, Sherwood, from Janesville, was there, also. Got a good break there—time in Illinois is 1 hour ahead of us, but show had a late arrival from Moline, and we got on the lot just after the cookhouse pulled on. Saw the second and third sections pull into Rockford on track adjacent to lot, although they unload about 1½ miles farther uptown.

Had a very pleasant day on the Beatty Circus at Watertown, Wisc., Sunday, Aug. 9th. Here is a real circus, more like the old Hagenbeck-Wallace in the 1920's. Also saw the show again Monday night at Janesville (14 miles north of here) and watched them load until 1:00 A.M. Sherwood sold tickets in his store at Janesville. Lots of fans on at Watertown, but very few at Janesville. The whole Racine Delegation came over for the day at Watertown, also Doc Conley and the Lindens from Aurora."

From Walter H. Gomes, Cambridge, Mass., Aug. 21, 1953

This has been one of the lean years for circuses for little old New England.

Caught the Big One in the Boston Garden, also under canvas at Manchester, N. H. More girly-girly and less good circus than ever but still a whale of a show.

I spent three days with the Connecticut Circus Fans regional convention at Bridgeport and Wallingford. This was held with Mills Bros. and, as always, were treated royally by Jack Mills and his boys. Mills puts on a very excellent performance—quite a few English clowns. Hugo Schmidt does a marvellous Bull act as well as Chimp number.

Caught King-Cristiani in Gloucester. Very swell show—all good circus and well worth seeing.

Murray Guy and his nephews Bob and Charles Hill went to Norfolk in spite of the fact that the Convention was cancelled. They enjoyed visiting the navy yard and went aboard the battleship Missouri. They also saw an air carrier that had been in Korea. Other spots of interest in the East were enjoyed by them.

Walter Pietschmann also flew into Norfolk, not knowing that the Convention had been cancelled. Walter travels a great deal for his business and hadn't been home to get his mail.

A. B. C. Hobbies, Box 181, South Omaha, Nebraska, can supply the only 1/2" scale model flat car less trucks on the market. Inquiries welcome.

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COVINGTON, KY.

Joseph Shields, C.H.S. member of San Diego, Calif., again extends an invitation to any Fellow member visiting California, to include this place, the first California Mission. There is a Museum and a fine Gift Shop with reasonable prices.

"Our Hospitality is 'Tops' "; if our Visitors play the game in a spirit of Friendliness."

So go to see Mr. Shields, at the Serra Book Shop, Mission San Diego de Alcala, Mission Valley, San Diego, California.

A Trip I Will Never Forget

It was about six in the morning when my mother, three friends and I left home for Washington, D.C. The first day was spent traveling along hot highways. We stopped the first night in Fort Payne, Alabama, about six hundred miles from Ruston.

Up early and out again we hit the trail for another hundred degree day riding. As we neared the mountains that afternoon new and different country lay ahead. Before we stopped for the second night in Wythville, Virginia, our car ran out of Dynaflow Drive fluid. Thank goodness there was a service station in sight where we got not only a change of Dynaflow, but in a much cooler climate. It was hard for us to imagine being in a hundred degree weather that was followed that night by the sixties.

The next day brought us to Natural Bridge, Virginia. We ate here and explored the beautiful Natural Bridge region.

After another stretch of traveling we entered Arlington, Virginia, where we stayed with friends during our visit in Washington. As some of you know Arlington, Virginia, Alexandria, and Washington are all just like one big, spread out city.

While in Arlington, I visited with Reverend Arthur V. Isenberg, CHS No. 455. Reverend Isenberg has a fine collection of old and new lithos, scrapbooks, and circusiana of different descriptions. He had old Christy Brothers, Parker and Watts, and many other nice lithos. Reverend Isenberg is writing a book entitled "My Town and the Big Top." The book tells of his home town Johnson City, Tennessee, and the many shows that played Johnson City.

I saw all of the usual tourist sights in Washington, many of them I have studied about and always longed to see. I was very pleased to obtain one of the original White House bricks, removed during the reconstruction in 1950.

On our way back home we stopped for a day in the historic town of Williamsburg, Virginia. The town has been restored to its original state in the early 1600's. The people dress just like they did in the early 1600's, and you feel like you are really living in that period of our history.

We also spent one night in Macon, Georgia, the home and winter quarters of King Brothers and Cristiani Circus. Macon, as many of you know, was also the home of the old Charles Sparks and Downie circuses.

I was glad to return home on the morning of July fourth, about one o'clock. I certainly was pleased to see my big stack of mail, and I had to read every bit of it before I finally called it a day.

By HANK FRASER, Age 17
CHS 401. CMB&OA

Mills Bros. Holds Memorial For Dan Rice at Girard

GIRARD, PA.—One of the reasons Mills Bros. Circus was anxious to play Girard, on Thursday, July 30, '53, was because it is the stamping grounds of America's immortal clown and showman, Dan Rice.

It was the first circus to play the town in 26 years and, just before noon, staged a special memorial tribute to Rice at the statue he erected in the public square, a stone's throw from the old Rice winter quarters. The statue erected by Rice was the first put up in the U. S. in memory of Civil War dead. Although at the time there was federal objection to an individual donating such a statue, the impressive memorial, contrary to government regulations, somehow "mysteriously" had Rice's name inscribed on it as doner and these words remain today.

Burma, queen elephant of the Mills herd and nationally-famous GOP mascot, laid a wreath on the statue while band leader Joe Rossi played taps. Oral tributes were paid Rice, and circusdom in general, by Mayor Ransom E. Drury, County Commissioner Fred Lamberton, circus owner Jack Mills, editor Walter Jack of the "Cosmopolite," newspaper originally founded by Rice and used by him politically in his unsuccessful bid for the U. S. presidential nomination; the Rev. Robert Homer of Universalist Church; and Coco, Jr., son of England's most famous clown, Coco, who, heading Mills Bros.' troupe of English clowns who attended in a group, paid England's tribute to America's most famous clown.

The Optimist Club, also represented at the historic ceremony, sponsored Mills Bros.' Girard performances, both to near capacity audiences, and netted themselves a profit of approximately \$1,000.

Circus Material For Sale

**Books, Route Cards, Tickets,
Programs
Many Other Items
Several Hundred Issues of
Billboard**

WILLIE INGRAM
CODELL, KANSAS

Sent in by Ed Cripps, Brantford, Ontario

This is a story that tickles me. One winter while at the Winter- quarters of Adam Forepaugh, a lion escaped from one of the cages. Adam happened to be walking by at the time. The menagerie men, armed with pitchforks and other weapons, were trying to get the lion in a corner and get him into a shifting cage. "Be careful boys, Adam shouted from a safe distance, "Catch him but don't hurt him. He's a fine specimen, and I don't want him hurt." At the moment that Adam shouted this the lion jumped over the attendants heads and headed toward Adam, who took to his heels to the nearest exit shouting: "Kill that moth eaten cat."

THE CIRCUS ELEPHANT'S LAMENT

Submitted by M. J. Olsen

(Written for the Indianapolis News)

I often sadly ponder of my far-off jungle home,
And the fateful day I left it this wicked world to roam.

I squandered all my money and found myself dead broke,
So I sought an elephantine Jew and put my trunk in soak.

Then trunkless did I wander forth till the day was on the wane.
When I met a man and a caravan and a great and lordly train.

I told him all my troubles and my tears began to flow
He said I'd make an interesting exhibit in his show.

So I swung in line with the porcupine, the leopard and the gnu,
The tiger and the antelope and the jumping kangaroo.

The lady from Circassia, and the man from Mandalay,
The hairless dog and the woolly hog and the yak from Tartary.

And thousands come and rubber at my trunk-stump every day,
And the sign that hangs upon it says that I was born that way.

—G. M. M.

(Editor's note: The above poem appeared in the **Indianapolis News**, June 20, 1900, immediately below an excellent review of the Ringling Bros. performance. Does any reader recall an elephant exhibit on the Ringling show that could have been the inspiration for this poem?)
